

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERRON LINDSEY,	§
	§ No. 559, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0002019767
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 12, 2008

Decided: February 3, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of February 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Gerron Lindsey, filed an appeal from the Superior Court's October 23, 2008 order denying his fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In April 2000, Lindsey was indicted on charges of Intentional Murder in the First Degree, Felony Murder, Attempted Murder in the First Degree, two counts of Robbery in the First Degree, two counts of Possession of a Deadly Weapon By a Person Prohibited, and five counts of Possession of a Firearm During the Commission of a Felony. On April 9, 2002, the day of trial, Lindsey pleaded guilty but mentally ill to a single count of Intentional Murder. In exchange for Lindsey’s plea, the State agreed not to seek the death penalty and dismissed the remaining charges. Lindsey was sentenced to life in prison.

(3) In his appeal from the Superior Court’s denial of his fourth postconviction motion, Lindsey claims that the Superior Court should have granted his motion because a) the prosecutor engaged in misconduct by improperly charging him with both robbery and felony murder in violation of *Williams v. State*, 818 A.2d 906 (Del. 2003); b) there was newly-discovered evidence that exonerated him—specifically, .38 caliber bullets belonging to an individual named “Ed”; c) his counsel provided ineffective assistance by failing to find that evidence and present it to the court; and d)

¹ Supr. Ct. R. 25(a).

the Superior Court utilized an improper legal standard when it denied his motion for postconviction relief.

(4) While Lindsey claims that the State improperly charged him with both robbery and felony murder in violation of *Williams*, any claim based on *Williams* is inapplicable since Lindsey ultimately pleaded guilty to intentional murder, not felony murder. Lindsey's claim of newly-discovered evidence is also unavailing because Lindsey knew of the "evidence" at the time he filed his third postconviction motion, but failed to assert the claim at that time.² Lindsey's ineffective assistance of counsel claim is likewise unavailing since he failed to present it to the Superior Court in the first instance.³ Finally, there is no evidence that the Superior Court utilized an improper legal standard when it denied Lindsey's fourth postconviction motion and we, therefore, conclude that Lindsey's last claim, too, is without merit.

(5) It is manifest on the face of the appellant's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

² Super. Ct. Crim. R. 61(i) (2).

³ Supr. Ct. R. 8.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice